HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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Writ Petition No. 14514 of 1997

Between

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B.Murugaiah and others ..Petitioners

AND

Principal Secretary to Government of A.P., Social Welfare Department and others ..Respondents

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:: JUDGMENT ::

23.3.2007

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

Writ Petition No. 14514 of 1997

This writ petition instituted by six persons mounts a challenge to the validity of notification issued by the District Collector, Chittoor in his proceedings dated 27.6.1997 invoking the power available to him under Section 4 (1) of the Land Acquisition Act, 1894 proposing to acquire lands situate in various survey numbers of T.Puttur Village in Thavanampalli Mandal of Chittoor District. The nature of classification of the lands, their survey numbers and the details of the pattedars and the extent of lands which is proposed to be acquired, have been shown in the schedule appended to the impugned notification which reads as follows:

SCHEDULE

Dist: Chittoor Mandal : Thavanampalli Village: T.Puttur

Description of the land-- wet or dry Government or Inam poramboke with S.No. or Paimsh No.	**Name of the Pattedar/enjoyer and interested person**	**Approximate extent to be taken up- Acrs.**	**Whether waste arable**
239/1 Govt. Dry	Doraswamy Reddy	0.10	
240/2 Govt. Dry	Murugaiah	0.06	
241/1B Govt. Dry	M.Rami Reddy	0.03	
241/2B Govt. Dry		0.02	
331/1BGovt. Wet	T.Chandrasekhar Reddy	0.03	
332/1 Govt. Wet	T.Chandrasekhar Reddy	0.01	
333/2B Govt. Wet	M.Pattabhirami Reddy	0.05	
333/4B Govt. Wet	T.Chandrasekhara Reddy	0.02	

336/3B Govt. Wet	M.Pattabhirami Reddy	0.01	
336/4B Govt. Wet	M.Pattabhirami Reddy	0.03	
336/5 B Govt. Wet	M.Pattabhirami Reddy	0.01	
336/6B Govt. Wet	N.Doraswamy Reddy	0.01	

The land of the first petitioner – Sri B.Murugaiah of an extent of 0.06 cents is proposed to be acquired. Though the second petitioner has joined the writ petition, there are no details either furnished or forthcoming as to the extent of his land, which is affected by the impugned notification. Be that as it may, a perusal of the schedule to the impugned notification would disclose that only small extent of lands from the petitioners 1 and 3 to 6 has been proposed to be acquired. The purpose behind this compulsory acquisition is to provide a pathway to the burial ground from T.Puttur Dalithwada.

Heard Sri P.Govind Reddy, learned counsel for the petitioners and the learned Government Pleader for Land Acquisition for the respondents.

The principal contention of the learned counsel for the writ petitioners is that the proposed notification for acquisition of the lands is totally unwarranted exercise inasmuch as there is already enough provision made by setting apart the land for purpose of utilization as burial ground for the dalithwada and hence, providing for yet another extent of land as burial ground, is totally uncalled for. Further, the writ petitioners also are all marginal farmers and therefore, the action of the authorities trying to deprive the writ petitioners of their lands by the impugned notification, is an illegal exercise of power. Further the land of an extent of Ac.1.41 cents situate in S.No.330/2 of T.Puttur Village is classified as “kallam poramboke” in the revenue records and this land

is therefore put to use for the purpose of thrashing the paddy; or staking the same for drying purposes and therefore, acquisition of any portion of this land for the purpose of providing burial ground is illegal and hence, the present notification which seeks to acquire the land compulsorily with a view to provide for a pathway to the aforementioned burial ground is also illegal.

The learned Government Pleader on the contra, has submitted that the land which is proposed for acquisition from the writ petitioners is very small extent and in fact, each of the petitioners would be deprived of very negligible extents of land and it is intended for the purpose of formation of pathway to enable the members of dalithwada to carry their dead to the burial ground without having to face any difficulties or problems enroute. The learned Government Pleader also pointed out that the land situate in Survey Nos.406 and 415 of the Village is classified as vagu poramboke and it is situate at a distance of two kilometers from the dalithwada and a portion of it is used as burial ground. The learned Government Pleader also draws my attention to the report submitted by the Advocate Commissioner who was appointed in O.S.No.440 of 1995 which was instituted by the petitioners 3 to 6 herein. It would disclose that particular land would be water logged during the monsoon season and that it will not be possible to use the same as a burial ground since it is in lower level to a check dam which is got constructed nearby thereto and therefore, the learned Government Pleader would suggest that the land situate in S.Nos.406 and 415 which is a vagu poramboke land, is not always being used for burial purposes and therefore, the additional necessity of providing the land had arisen. The learned Government Pleader also pointed out that the land situate in S.No.330/2 of an extent of Ac.1.41 cents which is classified as kallam poramboke, is in fact put to

use by the powerful elements of the Village by encroaching to an extent of Ac.0.90 cents and that they are cultivating the same. The balance extent of 0.51 cents of land is only used for the purposes such as using it as thrashing floor or drying bed etc. Therefore, the learned Government Pleader for Land Acquisition would urge that the writ petitioners are merely extending help to such elements of the Village who had occupied quite unauthorisedly large extent of land of 0.90 cents situate in S.No.330/2 and therefore, there are no bonafides behind the present exercise. To demonstrate that the members of dalithwada are being objected to using the government land for burial purposes, the learned Government Pleader also urged that the third petitioner herein – M.Doraswamy Reddy along with others had filed a civil suit in O.S.No.926 of 1973 on the file of the Additional District Munsif, Chittoor against laying of pathway through their fields to enable the daliths to carry their dead to reach the burial ground in S.Nos.406 and 415 of the Village. Upon contest, the said suit was dismissed. Similarly, the third petitioner and three others have again filed another suit in O.S.No.440 of 1995 soliciting grant of permanent injunction to restrain the District Collector and the Mandal Revenue Officer and the said suit has since been dismissed and appeal in A.S.No.396 of 2000 preferred therein is still pending. The learned Government Pleader has also pointed out that one another suit in O.S.No.660 of 1995 was filed on the file of the first Additional District Munsif Court against the proposed action of conversion of the land situate in S.No.330/2 which is classified as kallam poramboke into burial ground. The said suit was also dismissed on 1.4.2003. Aggrieved by the said judgment and decree, the third petitioner herein along with others filed an appeal in A.S.No.123 of 2003 on the file of the District Judge, Chittoor and the same is still pending.

Thus, the learned Government Pleader would urge that there was a concerted effort made to some how or the other, prevent making available the burial ground for the members of the dalithwada in the kallam poramboke land situate in S.No.330/2 of the Village. The learned Government Pleader would urge that the orders passed by the State Government through their Circular Memo dated 29.5.1997 of the Social Welfare Department upon which orders, the reliance has been placed by the petitioners would in fact require the Collectors to make assessment of requirement before acquiring the land in various villages for the purposes of providing pathways and providing land for burial grounds for the scheduled castes and only in case of absolute necessity, proposal for acquisition of private patta lands has to be taken up. Therefore, in this particular case, the District Collector had after due deliberations only proposed the acquisition in question. The learned Government Pleader for Land Acquisition would further urge that the matter had been examined by the Social Welfare Department of the State Government and through orders passed on 30.5.1996, the State Government had accorded permission for acquisition of the land measuring 0.38 cents situate in various survey numbers for providing pathway from the dalithwada to the burial ground and therefore, he would submit that after appropriate consideration only, the District Collector had initiated the proposals for acquisition of the land in question. Thus, the learned Government Pleader sought to demonstrate that the present proposal for acquisition of the land had been preceded by the personal inspections of the Government officials and only after arriving at the conclusion about the absolute necessity of acquisition of land for providing the pathway, the impugned notification has been issued by the District Collector.

It can hardly be doubted that death is the greatest leveler of all. It

visits Kings and commoners alike. Yet, even in the matter of death, myth and controversy is surrounded. As has been demonstrated by the learned Government Pleader, the attempt on the part of the State to provide for a small extent of land of o.50 cents from out of Ac.1.41 cents of land which is already classified as kallam poramboke and belonging to the State, is what is sought to be set apart as burial ground in effect, is resisted. If a burial ground is to be established in a small extent of land in S.No.330/2 duly carving it out from the kallam poramboke, it must also have a pathway provided thereto for ingress and egress purposes. Lest, when dead are sought to be carried through the cultivated lands, the objections and controversies would be raised. To set at rest any such or all speculative aspects, the impugned notification has proposed to acquire small bits and pieces of land belonging to the petitioners so as to form a free pathway to the proposed burial ground. Unfortunately, the writ petitioners have not demonstrated with any credible material that the specific statement of fact asserted by the Revenue Divisional Officer, Chiittoor in his additional counter affidavit filed by him which is to the following effect, is erroneous:

> "The land in S.No.330/2 measuring an extent of Ac.1.41 cents which is classified as kallam poramboke has been proposed for burial ground to the Scheduled Caste people of T.Puttur Harijanwada. During the course of field inspection it is noticed that only an extent of Ac.0.51 cents is being used for kallam purpose and the remaining extent of Ac.0.90cents is under encroachment of caste Hindus by way of cultivation. In the surrounding fields to kallam poramboke land, sugar cane is being raised mostly and paddy was already harvested in lesser extents. The existing kallam poramboke in which only Ac.0.50 cents being used for thrashing is

> sufficient. The remaining extent of Ac.0.91 cents can be utilized for the provision of burial ground. As such the entire extent of Ac.1.41 cents in S.No.330/2 which is classified as kallam poramboke is sufficient for both kallam poramboke and Burial ground to scheduled caste people".

However, a large extent of land in Ac.0.90 cents situate in S.No.330/2 is being freely encroached upon and cultivated and enabling huge profits to be derived from out of the same. The interests of such men would certainly be affected if the said land is set apart as burial ground for the members of the dalithwada and by allowing a burial ground to come up there, it would call for an end of all activities of encroachment and the cultivation of such lands unauthorizedly as well. When the State is unable to prevent such misuse and abuse of lands set apart for communal purposes and when the State has alternatively thought of providing the same as a burial ground for the members of dalithwada, such decision can hardly be faulted at all.

Providing a site for burial ground is undoubtedly a public purpose. Consequently, providing for a compulsory pathway to such burial ground for ingress and egress purposes has to be necessarily treated and termed as public purpose as well. Compulsory acquisition of land is permissible for achieving a public purpose. Therefore, the writ petitioners are not justified in any manner in objecting to the State Government utilizing a portion of its land to be set apart as burial ground. But however, without objecting to the same in so many words, the writ petitioners are merely expressing an objection against the impugned notification which seeks to provide for a pathway to the proposed burial ground. If the pathway is choked up, even if a portion of land situate in S.No.330/2 is re-classified as burial ground for dalithwada, it cannot be put to such a use. Therefore, I do not find any

bonafides in the attack mounted by the writ petitioners against the proposed acquisition for the formation of the pathway. However, a mere look at the schedule appended to the impugned notification would disclose that only small extent of lands, not more than 0.10 cents of the individual petitioners is being affected by the impunged acquisition. In para 2 of the counter affidavit, the Revenue Divisional Officer had disclosed the extents of land proposed to be acquired from the writ petitioners for providing pathway to burial ground which are very small extents ranging from Ac.0.01 cents to Ac.0.10 cents. Undoubtedly, the petitioners 3 to 6 own substantial extents of land while petitioners 1 and 2 own small extents of land. I therefore find that for achieving a larger public purpose, the sacrifice called for from the writ petitioners through the impugned notification is quite insignificant one. Therefore, I do not find any justification for quashing the impugned notification. Hence, the writ petition is dismissed, but however, without costs.

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NOOTY RAMA MOHANA RAO.J.

23.3.2007
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